Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ALEXANDER F. BEDDOE
Petitioner

versus

RAYMOND SPILLMAN; ROBERT MIZELL;
PATRICIA L. CUNNINGHAM; GAIL ARNDT;
and ROBERT D. ALLPHIN, SR., et al.,

Respondents

PETITION FOR COMMON LAW WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR COMMON LAW WRIT OF CERTIORARI

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46 pp

Questions Presented

1. Does the appellate Court's endorsement of the lower court's refusal to address petitioner's construction of the Article IV Section 3 clause 2, pursuant to 28 U.S.C. §§ 1330(a) and 1605(a) in conjunction with Article III Section 2 clause 1, entitle petitioner to be placed under the protection of this Court's power of supervision?

2. Does the appellate Court's endorsement of the lower court's reason for refusal, to address petitioner's Fed. R. Civ. P. 60(b)(1) Motion as "patently frivolous," constitute a conflict with the mandates of statutory and Constitutional protection found in 28 U.S.C. §§ 1330(a) and 1605(a) as well as Article III Section 2 clause 1 to the Constitution of the United States of America respectively?

3. Does the appellate Court's endorsement of the lower court's ruling, with the statement: "Neither of these statutory provisions apples to the defendants in this action," constitutionally reflect the meaning of 28 U.S.C. §§ 1330(a) and 1605(a) in the light of Article III Section 2 clause 1?

4. Does the Ninth Circuit's refusal to recite authorities for its rejection of petitioner's merits and evidence injure and subject petitioner to the prejudice of "a territorial" court, under the property clause, that does not cognize petitioner's constitutional public express will, for his res, by "Declaration?"

5. Does the Appellate Court's endorsement of lower court's decision make a determination that petitioner is a decedent and beneficiary with "other property" in respondents' agency's property clause jurisdiction contrary to petitioners constitutional right to disclaim and revoke any presumed relationship by express will?

6. Does petitioner have a "case arising" issue under Article III that has been ignored because of courts' discretion to

rely heavily on decisions construing 28 U.S.C. §1331 from which petitioner sought to amend?

7. Does the appellate Court's agreement with the lower court violate the Amendment 10 under the constitutional doctrine that this is a government of enumerated powers?

8. Did the appellate Court's endorsement of the district court's decision endorse an abuse of discretion when it failed to recognize petitioner's construction of the Constitution and laws of the United States as his reasons for amending complaint?

9. Does the petitioner have the legal right by will, to place his res within the situs of the constitutionally incorporated United States of America and the incorporated State, and then claim—non frivolously—28 U.S.C. §§1330(a) and 1605 (a)(1)(2)(4)(5) as protection from "territorial or other property" jurisdiction of Article IV Section 3 clause 2 to the Constitution of the United States as it applies to the territorial public welfare policy of the several states of United States?

10. Is appellate Court's ruling of "patently frivolous" deserving of $1,500 damages "a territorial" ruling that has no constitutional/common law justification, as far as petitioner's constitutional rights of choice and property are concerned, outside the property clause?

11. Is the appellate Court's endorsement of the lower court's action only a recognition of prima facie evidence with prejudice, denying petitioner constitutional right of discovery and trial to disprove said prima facie evidence?

12. Does the appellate Court's action reflect that there is no case law to give appellate Court constitutional direction to the prejudice of petitioner's constitutional claim?

13. Does the appellate Courts decision decide that petitioner has no will to decide his own destiny and that

petitioner will reside in the political law of the lower courts political choice by controlling petitioner's res?

14. Is a *res* considered other property within the meaning of Article IV Section 3 clause 2 to the Constitution of the United States of America?

15. Does the appellate Court have jurisdiction to create another State within the jurisdiction of the United States as per Article IV Section 3 clause 1 of the Constitution of the United States?

16. Does both courts' action determine respondents and employer's immunity without discovery or consideration of evidence and facts?

LIST OF THE PARTIES

Alexander F. Beddoe,
Petitioner

Raymond Spillman; Robert Mizell; Patricia L. Cunningham; Gail Arndt; and Robert D. Allphin, Sr., et all.,
Respondents

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PETITION FOR COMMON LAW WRIT OF CERTIORARI

PETITIONER, Alexander F. Beddoe, respectfully prays that a Writ of Certiorari issue to review the Judgment Memorandum of the U.S. Court of Appeals for the Ninth Circuit, to overturn

the lower court's issuing of Judgment in favor of respondents and against petitioner.

OPINIONS BELOW

The U.S. Court of Appeals MEMORANDUM filed, April 14, 1994 appears in Appendix A1 infra.

The ORDER of the district court appears at A2 infra.

JURISDICTION

The Court of Appeals' Memorandum in this matter was tried, on April 14, 1994. The appellate court agreed with district court's denial of Fed. R. Civ. P. 60(b)(1) motion for relief from judgment in order to amend complaint as set forth in A1. This Court's jurisdiction is invoked under 28 U.S.C. Sections 1254(1) and 1651

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions primarily at issue are initially Article III Section 2 clause 1, Article IV, Section 3 clause 1 and clause 2; 28 U.S.C. Sections 1330(a), 1603, 1604, 1606 and 1605(a)(1)(2)(4)(5); Amandment 10; Federal Rule of Civil Procedure 60(b)(1)

CONSTITUTION OF THE UNITED STATES

Article III Section 2 clause 1, The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party; to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different

States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article IV Section 3 clause 1. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as the Congress.

Article IV Section 3 clause 2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;

Amendment 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

28 U.S.C. SECTION 1330(a) Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

28 U.S.C. SECTION 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. SECTION 1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) is an organ of a foreign state or political subdivision thereof, or a majority of whose share or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

(c) The "United States" included all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon a act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the

territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner an to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages;

FEDERAL RULES OF CIVIL PROCEDURE

Rule 60(b)(1)

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.**

One motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reason: (1) mistake, inadvertence, surprise, or excusable neglect;

STATEMENT OF THE CASE

This petition results from an original action that started in the United States District Court for the Eastern District of California, filed March 26, 1993. Then plaintiff Beddoe instituted a suit against individual agents of the Internal Revenue Service based on the understanding that alleged violations of petitioners property rights, by the individual agents, could only be addressed under 28 U.S.C. Section 1331 in order get a constitutional hearing that would "arise under" Article III regarding petitioners right not to volunteer or gift his property rights, via his res, as a fiduciary/beneficiary of the public trust.

However, during the preliminary pleading period and after the lower court granted defendants Motion to Dismiss on July 1, 1993, petitioner discovered that he had made a mistake in attempting to invoke 28 U.S.C. Section 1331 and going against the defendants in their individual capacity. The decision then had to be made whether to start a new action or amend the dismissed one. Since petitioner had been threatened with sanctions[1] about any future filings, petitioner had to decide what route may be misunderstood the least by the court., Thus, on July 21, 1993, petitioner decided to thus motion the court under Rule 60(b)(1) for leave to amend his complaint pursuant to 28 U.S.C. Sections 1330(a) and 1605(a)(1)(2)(4)(5) believing this to be the least offensive to correct his legal mistake.

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[1]District Court Order stated in reference to alleged "frivolous filings;" "The court cautions plaintiff that future frivolous filings in this court will result in imposition of monetary sanctions pursuant to Rule 11 and the issuance of a vexatious litigant order, thereby precluding him from filing any further documents in this court unless he gives security or bond."

Since it appeared apparent to petitioner that the statute, to which he was going to amend, carried its own reason for federal and constitutional question jurisdiction, petitioner's initial memorandum, with his motion under 60(b), left the court thinking that the basic reason justifying petitioner's action was that he was a pro se litigant.[2] The lower court appeared to either ignore or fail to consider all of plaintiff's pleadings, believing that petitioner did not meet the burden of showing justifiable mistake or excusable inadvertence under Rule 60(b)(1). In addition, the court determined that petitioner's use of the statute, to which he desired to amend, to be "patently frivolous"—this without discovery and consideration of facts or evidence.

On September 2, 1993 petitioner filed a Notice of Appeal to the Ninth Circuit Court with Opening Brief and supporting documents at the specified time. Accordingly respondents filed their Reply Brief. On April 14, 1994 a Memorandum was filed by the Appellate Court Justices affirming the District Court's denial of petitioner's motion under 60(b). In that Memorandum the Appellate Court gave only one reason for affirming the lower court and that was, "Neither of these statutory provisions [28 U.S.C. §§1330(a) and 1605(a)(1)(2)(4)(5)] applies to the defendants in this action." Said reason, however, had no "plain authority" to back it up.

In addition, the Appellate Court awarded sanctions against petitioner for the sum of $1,500. The reason for the sanction was given as a "bringing of a frivolous appeal." Neither the lower court or the Appellate Court gave any "plain authority to

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[2]The court, in its analysis, stated, "Plaintiff, relying solely on his status as a pro se litigant, argues that he was mistaken in bringing his prior complaint..." (District Court Order p. 3)

the contrary"[3] to show why either of petitioner's Motion to Amend or his Appeal of that motion are "frivolous."

ARGUMENT

CONSTITUTIONAL/ FEDERAL QUESTION ISSUES

In the beginning of our nation the incorporated government, that resulted from the Constitution, was founded on "popular sovereignty,"[4] i.e., the source of all power and creator of all law was "We the People of United States," and the government ruled by their incorporated Constitutional consent. As a result, governmental powers were limited to those enumerated in the Constitution, in order to contain the government with corporate

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[3]The District Court stated that, "Asserting such ... theory in light of plain authority to the contrary constitutes a violation of Fed. R. Civ. P. 11."

[4]"Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and state governments." Spooner v McConnell, 22 Fed. Cas. 939, 943

Government is not sovereignty. Government is the machinery or expedient of expressing the will of the sovereign power... This sovereign power in our government belongs to the people, and the government of the United States and the governments of the several states are but the machinery for expounding or expressing the will of the sovereign power... but it must be remembered, under our government, all sovereign power is lodged in the people; and the government, by its different departments, can exercise only such power as has been delegated to it by the people. None of these delegated powers can be by the government delegated to some one else. They are only granted to the government to be, in proper cases, exercised by it, and not to be given to another to be exercised by that other...because neither congress nor the treaty-making power can grant away the sovereign powers of the government, but they can only exercise them for the people to whom they belong. Cherokee Nation v Southern Kan. R. Co., 33 F. 900 908-13 (1888); See also, City of Bisbee v Cochise Co., 78 P 2d 982, 985-6 (1938); Love v King Co., 181 Wash. 462, 467 (1935); Martin v Tollefson, 24 Wn. 2d 211, 216 (1945)

bounds, thereby protecting the ultimate sovereign—"the People."[5]

Article IV Section 3 clause 2 of the Constitution of the United States of America created "territory or other property" within the geographical boundaries of each state in this Union. It also made it possible for said "territory or other property" to have its own citizens (persons) and legal jurisdictional forum separate from and foreign to the situs of the corporate Constitutional forum of the Preamble "We the people" based on original sovereignty not given over in the enumerated powers of the federal government. The founding fathers confirm this view by the inclusion of Amendment 10 saying, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Article IV Section 3 clause 2 also affected the character of the governments of the several states by delegating to them a type of federal authority—based on social and political policy[6] considerations of implied contracts by operation of law—which is to be exercised over those citizens, residents, or persons subject to and contemplated by the Article IV Section 3 clause 2.

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[5]*Black's* 6th Edition at page 1135 defines the term "People" as "A state; as the people of the state of New York."

"It is the state [people], it is to be observed, that is the possessor of sovereignty...not the government...the state [people] itself is the creator of all law, the state [people] is not itself a product of the law. Constitutions create governments not states. They are the creations of states [people] already existent." *Encyclopedia American,* Vol. 25 (1946) at page 506

[6]Black's Law Dictionary, Revised Fourth Edition, at page 1317 states in part, "As applied to a statute, regulation, course of action, or the like, refers to its probable effect, tendency, or object considered with reference to the social or political well-being of the state."

Said Article had no affect on the character of the private natural individuals/citizens who had expressly chosen to maintain situs in the incorporated states and not volunteer to participate in the public policy of the social welfare jurisdiction, or part thereof, delegated by Article IV Section 3 clause 2.

Petitioner, in his study and research of the Constitution and laws of the United States, discovered that he has been presumed through social welfare policy considerations of the several states by operation of law, to have constructively conveyed (volunteered) a gift(s) in succession to establish intangible property in the form of a *trust res* in "a territorial" jurisdiction administered pursuant to Article IV Section 3 clause 2 by the United States.

The Court stated, regarding Article IV Section 3, that there are two kinds of territories in the United States, "the Territory" and "a territory." The former merely designates a particular part or parts of the earth's surface—the imperialy extensive real estate holdings of the Nation; the latter is a governmental subdivision which happened to be called a "territory," but which quite as well could have been called a "colony" or "province." O'Donoghue v United States, (1933) 289 US 516, at 537 and 538. The Court stated in First National Bank v Yankton County, (1879) 101 US 129, 25 L.Ed. 1046, that, "A territorial government is an agency employed by Congress." In the territories the sovereignty of the United States is supreme and complete and the powers of government exercised by the territories are only such as are authorized under the organic act creating the government of the territory. Snow v United States, 18 Wall 317, 21 US L.ed. 784. Also see Benner v Porter 9 How. 235, 13 L.Ed. 119 where the court said, "The distinction between the federal and state jurisdictions, under the constitution of the United States, has no foundation in territorial governments; and

consequently, no such distinction exists either in respect to the jurisdiction of their courts or the subjects submitted to their cognizance. There is but one system of government or of laws operating within their limits, as neither is subject to the constitutional provisions in respect to state and federal jurisdiction." See also, People of State of New York ex rel. Kopel v Bingham, 81 N.E. 773, 189 N.Y. 124, affirmed 29 S.Ct. 190, 191, 211 US 468, 53 L.Ed. 286. where the court stated that a "territory" of the United States is a portion of the country not included within the limits of any state and not yet admitted as a state into the Union, but organized under the laws of Congress. In addition see also, In re Kopel, 148 F. 505, 507, citing De Lima v Bidwell, 21S.Ct. 743, 182 US 1, 45 L.Ed. 1041; In re Lane, 10 S.Ct. 760, 135 US 447, 34 L.Ed. 219; Ex parte Morgan, 20 F. 298, 305.

The presumption of petitioner's civil death to property rights has lead to the supposition that petitioner is a franchised "person," and beneficiary "subject to" the law of succession, and resident trustee to the equitable law of estates in trust, to an unincorporated "a territory" association of United States under Erie Railroad v Tompkins, 304 US 64 (1938). Thus, petitioner has been and is being presumed by said policy considerations to be a "person" with status in the foreign "territory or other property" of the United States subject to the will and policy considerations of the legislature in its Article I territorial courts.

In Kansas v Colorado, (1906) 206 U.S. 46 at 89 **speaking of *Article IV Section 3*** the Court stated, "Primarily...it is a grant of power to the United States of control over its property. That is implied by the words **'territory or other property,'** ...it has been referred to in some decisions as granting political and legislative control over the territories as distinguished from the *states of the Union*. But clearly it does not grant to Congress any

legislative control over the states, and must, so far as they are concerned, be limited to authority over the property belonging to the United States within their limits."[emphasis added]

Petitioner, upon discovering the afore mentioned true facts and law surrounding the presumed and implied status of his rights, promptly began to move to assert his rights in an absolute manner in order to counter any presumption by the authority of the United States or its agencies by and through Article IV Section 3.[7]

Petitioner's action originated because petitioner believes his construction of the Constitution and laws of the United States demonstrate that petitioner has a free and unencumbered choice, without prejudice under the Constitution of the United States, whether or not he has to volunteer his res, by operation of law, as a fiduciary/beneficiary of the public charitable trust association's welfare policy considerations as it is administered through the United States by its agencies, under power and authority of Article IV Section 3 clause 2.

Petitioner believes that respondent's original tortious actions toward him result from respondent's, through their employer as an agency of the United States, under the construction of the Constitution through Article IV §3, giving a conflict of Law,[8] that view plaintiff as having gifted (volunteered) his res and cor-

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[7]Petitioner, in his search for the proper legal procedure to obtain redress of grievances resulting from violation to rights of property under the Constitution, has attempted previous litigation without success which respondents use to imply that petitioner is a "vexious" litigant and buffoon because of being ruled against and the court referring to merits of his cases as "frivolous."

[8]"No sovereignty can extend its process beyond its own territorial limits, to subject either persons or property to its judicial decisions. Every exertion of authority beyond these limits is a mere nulity, and incapable of binding such persons or propety in other tribunals." Story—Conflict of Laws, Section 639

responding property rights into the jurisdiction of said Article IV Sec 3 of the Constitution thus empowering Congress to establish public welfare policy considerations, under which respondents cover the "nature" of their acts, for its "territory or other property," thereby affecting anyone who is presumed to be within that status. Thus, petitioner challenged respondent's tortious taking of plaintiff's property, to satisfy an alleged "income tax," as purely a federal question issue of property rights that "arise under" the Constitution because petitioner has made it expressly known—see petitioners "Declaration" at page A8 of Appendix —that his situs is not within respondent's jurisdiction under the unincorporated public welfare trust association policy, as a fiduciary/beneficiary of "territory or other property" under Section 3 clause 2 of Article IV.

Respondent's claimed authority for their action brings up a "federal question" which the court, in Osborn v President, Directors & Co. of Bank (1824) 22 U.S. 738, 6 L.Ed. 204, said that all other questions must be decided as incidental to the federal question and **those other questions cannot arrest the proceedings.** The court concluded that when a question to which the judicial power is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the federal courts jurisdiction of that cause, **although other questions of fact or of law may be involved in it.** [Emphasis added] Likewise, the court in Verlinden B.V. v Bank of Nigeria (1983) 461 US 480, 76 L Ed 2d 81, 103 S Ct 1962, reaffirmed the rule that it is a sufficient foundation for jurisdiction within the meaning of the "arising under" clause of Article III §2 clause 1 when the title or right set up by the party may be defeated by one construction of the Constitution or law of the United States and sustained by the opposite construction. The Court stated in United States v Texas (1892) 143 US 621,

36 L Ed 285, 12 S Ct 488, that under Article III § 2, clause 1, the Supreme Court has original jurisdiction to hear a case brought by the United States against a state to determine a **dispute over the boundary between a state and a territory of the United States.** First, reasoned the court, the suit fell within Article III's grant of judicial power pursuant both to its "arising under" clause, and its clause granting judicial power to "controversies to which the United States shall be a party." Second, the court reasoned, Article III § 2 also granted to the Supreme Court original jurisdiction in all cases **"in which a state shall be a party,"** the phrase "all cases" referring to all cases mentioned in the preceding clause to which the state is a defendant or a plaintiff. The latter clause, the court concluded, **was not intended to apply** only to suits in which the state was party and the other party was a state of the Union or a foreign state, but **also to suits in which the other party was the United States.** [Emphasis added]

Therefore, appellate Court's agreement with lower court, 1) Denied petitioner's claim to be a "citizen of a State" in dispute with "a territory of the United States." 2) Denied "constitutional question jurisdiction," under 28 U.S.C. § 1330(a) and 1605 (a), based on "policy considerations" underlying the purpose of 28 U.S.C. § 1331 "that limit its application" in the original case which petitioner has sought to amend from.

As stated in *Article III*—Arising Under Jurisdiction. 76 L Ed 2d 831 in reference to Verlinden v Bank of Nigeria 461 US 480, 76 L Ed 2d 81, 103 S Ct 1962 (1983), concerning *Article III Section 2 clause 1*, and "case arising," "However, it should be noted that the jurisdiction conferred by the constitutional 'arising under' clause is broader than the federal question jurisdiction provided by Congress in 28 U.S.C. §1331, even though the language of the statute is almost identical to that of the

constitutional clause. The reason given for this distinction is that **there exists policy consideration underlying the purpose of the jurisdictional statute that limit its application and which do not enter into the picture when construing the constitutional authorization for statutory federal question jurisdiction.**" [Emphasis added]

Petitioner maintains that under his understanding of the Constitution of the United States that respondent's, as agents of the United States' "territory or other property," are constitutionally foreign to petitioner and dispute brings up a federal question as "arising under" Article III § 2 as per Verlinden B.V. v Bank of Nigeria, supra. Thus petitioner has properly attempted to exercise his Constitutional rights against a foreign territorial sovereign, known as United States, under "the constitutional federal question jurisdiction" of 28 U.S.C. §§ 1330(a) and 1605 (a) which have been blocked by lower and appellate courts' decisions.

In reference to the territories, Congress occupies a dual position—one as the Congress of the United States limited by the constitution, and the other as a local legislature to which many of the constitutional limitations on Congress do not apply. Binns v United States, 194 U.S. 486, 24 S. Ct. 816, 48 U.S. (L. ed.) 1087; Rassmussen v United States, 197 U.S. 516, 25 S. Ct. 514, 49 U.S. (L. ed.) 862.

Likewise, the courts of a territory are legislative courts created in virtue of the clause which authorizes Congress to make all needful rules and regulations respecting the territories belonging to the United States. Clinton v Englebrecht, 13 Wall. 434, 20 US L. Ed 659.

Therefore, the appellate Court's agreement with the lower court was nothing more than an action of a territorial or legislative court, where like Congress, "many of the constitutional

limitations...do not apply" due to the public welfare policy considerations that come under Article IV Section 3. This is because the distinction between the federal and state jurisdictions, under the constitution of the United States, has no foundation in territorial governments (as in the authority under Article IV Section 3 clause 2); and consequently, no such distinction exists either in respect to the jurisdiction of their courts or the subjects submitted to their cognizance. There is but one system of government or of laws operating within their limits, as neither is subject to the constitutional provisions in respect to state and federal jurisdiction. Benner v Porter, 9 How. 235, 13 U.S. (L. ed.) 119

Thus the statute, to which petitioner's motion under Fed. Rule of Civil Procedure 60(b)(1), was to be amended to, was subject matter not cognizable by either the District Court or the Appellate Court acting as a "territorial" court—thus abusing discretion based on ignoring constitutional "case arising" under Article III § 2 clause 1.

COURTS CREATE A NEW STATE

Article IV Section 3 clause 1 of the Constitution of the United States of America states: "New states may be admitted by Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as the Congress."

The appellate Court, in agreement with the lower court, essentially violated both the letter and the spirit of this clause. Their denial of petitioner's motion as "frivolous" created a "new State" within the meaning of this clause. And further, appellate Court, and lower court, made a political decision regarding peti-

tioner. Only congress has the power to create new States and make political decisions.

RAMIFICATIONS OF RES AS GIFT IN TRUST

Respondents, as agents of "territory or other property" of the United States—assisted by lower and Appellate Court error—want to make "a territorial" tax issue out of the property issue at hand and nothing could be further from the truth. The alleged "tax issue" refers only to the purpose for which the United States' agency, and the agent respondents, function and not the true "nature" of their "commercial activity." The primary "nature" is the *trust res* that creates the Article IV § 3 "person's" or "beneficiary's" estate in trust.

Petitioner's implied gift (or gifts) of his estate (res) were never intended to be within the United States, but were placed there by United States, acting through respondents, in the "nature" of their activity by operation of law. The appellate Court's, affirming the lower court, made a determination that petitioner is a decedent and beneficiary of United States and agencies under Article IV Section 3 clause 2 and that petitioner has "other property" with said Article IV jurisdiction. The actions of the courts upholding respondent's actions has upheld an unconstitutional, extra-territorial taking in a commercial "nature." The Court is Constitutionally bound, under Article III, to grant a Writ of Certiorari to resolve this case arising under the Constitution.

Additionally, ...the power of Congress, when affirmatively exercised over a territory, situated as supposed, is uncontrolled by the provisions of the constitution in respect to national taxation. De Lima v Bidwell, 182 U.S. 1, 21 S. Ct. 743, 45 U.S. (L. ed.) 1041; Fourteen Diamond Rings v United States, 183 U.S. 176, 22 S. Ct. 59, 46 U.S. (L. ed.) 138.

While Congress has no power under the general grant in the constitution of power of taxation to impose any tax that has not a uniform operation throughout the United States, it may, as a local legislature, enact a system of taxation for each territory unhampered by the uniformity clause in the constitution. Binns v. United States, 194 U.S. 486, 24 S.Ct. 816, 48 U.S. (L.ed.) 1087; Rassmussen v United States, 197 U.S. 516, 25 S. Ct. 514, 49 U.S. (L. ed.) 862. In the exercise of this power Congress, like any state legislature unrestricted by constitutional provisions, may, at its discretion, wholly exempt certain classes of property from taxation, or may tax them at a low rate than other property. Binns v United States, supra.

In Williams v United States, (1933) 289 US 553, 77 L Ed 1372, 53 S Ct 751, the court observed that the authority granted to territorial courts to hear and decide controversies arising in the territories of the United States ... is not that judicial power granted by § 1 and defined by § 2 of Article III of the Constitution; rather it is derived from the property clause, under which Congress may create territorial courts not contemplated or authorized by Article III, and may confer upon them plenary judicial power. The court found that ... such courts ... constitutes appropriate means by which to exercise the congressional power to make needful rules respecting the territory belonging to the United States. See McAllister v United States (1891) 141 US 174, 35 L Ed 693, 11 S Ct 949.

SOVEREIGN IMMUNITIES

Petitioner attempted to plead 28 U.S.C. §§ 1330(a), 1605(a)(1)(2)(4)(5), because petitioner's construction of the Constitution show him that his *res* is **not** within that public welfare policy of that "territory or other property" jurisdiction of Article IV Section 3 clause 2 that respondents, as agents of

United States, in conjunction with courts, actions allege. Petitioner maintains he has a situs in the constitutionally incorporated States of California and United States not subject to political rights or franchises as public welfare policy considerations held as privileges in the legislative discretion by Congress (See Boyd v Nebraska (1892) 143 US 135, 36 L Ed 103, 12 S Ct 375.), thus respondents and their United States employer are foreign as per the "territorial" relation. Said Statute makes it plain, according to plaintiff's construction of the Constitution to the United States, that United States through it agency has waved all immunity to suit because:

1) Respondents exist and function as foreign against petitioner's express right by "Declaration" over his res **not** to be a beneficiary of and subject to the political rights or franchises, held as public welfare trust privileges, and entitlements in the legislative discretion by Congress through powers vested under Article IV §3 clause 2 known as "territory or other property."

2) Respondent's said foreign status, in relation to petitioner, is a result of Article IV Section 3 clause 2 of the Constitution of the United States of America in order to assert regulatory control over petitioner's property and commerce under the Erie Railroad v Tompkins doctrine supra. See Snow v United States, supra; Kansas v Colorado, supra. However, the "purpose" said regulatory control over petitioner's property rights is disguised under the pretense of a tax "nature" while actually only being a "purpose." **The "nature" is property rights taken for quasi in rem commercial tax "purposes."**

3) United States, through the commercial actions of respondents, is subject to the jurisdiction of the Federal Court for having waived its immunity by implication. United States through its agents, as respondents, is functioning only by a prima face presumption of public welfare policy considera-

tions—to assert regulatory control over petitioner's property—of the several states that a gift in succession came into being by operation of law as evidenced by Erie Railroad v Tompkins, supra. This is opposed to petitioners express testamentary evidence by "Declaration."

As stated in Moores Federal Practice regarding Chapter 97 of 28 U.S.C. at JC-800.3 it is read, "the burden remains with the foreign state to present evidence to the court justifying its claim. The ultimate burden of proving immunity rests with the foreign state." And further at JC-800.7 it states, "The ideas behind this provision is that a foreign state who has induced a private party to enter into a contract should not thereafter be permitted to unilaterally withdraw the waiver of immunity after the dispute arises."

In essence, the United States, through respondent's, have collected incomplete gifts and are still attempting to collect incomplete gifts under a presumed and implied contract from petitioner in the past. Now that petitioner has become informed regarding his property rights under the constitution and taken action against the true "nature" of respondent's actions in their territorial authority, respondents are claiming, in effect, sovereign immunity after the fact. This is waiver of immunity by implication according to 28 U.S.C. § 1605(a)(1).

4) Respondents are subject to the jurisdiction of the Federal Court based upon a commercial activity. According to House Report No. 94—1487, 94th Cong., 2d Sess. (1976), If an activity is one that normally could be engaged in by a private party, it is a "commercial activity" and a foreign sovereign is not absolutely immune. Being alleged a member of an unincorporated association viz., private trust via quasi contract against ones will, cannot make this petitioner subject to a foreign

state's private acts. Thus, respondents have no immunity from suit.

Additionally Moores Federal Practice, regarding 1605(a)(2), "excepts a foreign from immunity when; 1) the action is based upon commercial activity carried out by the foreign state in the United States." House Judiciary Committee Report (94-1487) supra, sites the following as examples of this situation; "a representation in the United States by an agent of a foreign state that leads to an action for restitution based upon unjust enrichment." In other words, respondent's government is trying to enrich itself at petitioner's expense because plaintiff has expressly disclaimed by "Declaration" to be a beneficiary of the "nature" respondent's private trust's public charitable policy.

5) Respondents are subject to the jurisdiction of the Federal Court based upon the fact that rights of property in the United States acquired by succession or gift. "There is general agreement that a foreign state may not claim immunity when the suit against it relates to rights in property, real or personal, obtained by gift. The reason is that, in claiming rights obtained by gift, the foreign state claims the same right which is enjoyed by private persons." See House Judiciary Committee Report No. 94-1487 on Sovereign Immunities Act supra. Petitioner asserts that respondents' actions are based upon public welfare policy considerations of the several states because a gift(s) in succession is presumed to exist by operation of law, as evidenced by Erie Railroad v Tompkins supra, and as a result petitioner is presumed to be bound as a franchised fiduciary/beneficiary and there is nothing he can do about it. When, in fact, said result of being a franchised beneficiary is nothing more than a unilateral act, viz., a constructive trust that cannot stand before the expressed will of petitioner not to be a franchised "person." Petitioner maintains that said expressed will gives petitioner title

or right to his property which waives any plea of immunity, because petitioner has the legal right to place his res within the situs of the constitutionally incorporated United States of America, outside the special the public welfare policy jurisdiction of Article IV § 3 clause 2. Thereby, **non-frivolously**, claiming 28 U.S.C. §§1330(a) and 1605(a)(1)(2)(4)(5) as "positive" law for access to "case arising" under Article III of the Constitution.

Likewise, appellate Court's sanctions, against petitioner are also in violation of his Constitutional rights by attempting a quasi in rem legislative control over petitioner contrary to his express will to control of his own res.

DISCOVERING FACTS IN ISSUE

Petitioner asserts that appellate Court's agreement with district court has effectively blocked, with prejudice, the process of discovery because of denying the bringing of his action under the proper statute. The basis of petitioner's action can be substantiated by discovery. Therefore, for the following reasons, discovery is vital to presenting petitioners full issue upon amending complaint.

1) 28 U.S.C. §1603 is for the purpose of defining whether an entity is a "foreign state" or an "agency or instrumentality of a foreign state." The basis of the merits of the suit have to do with whether or not respondent's, and their employer United States, in its Article IV Section 3 clause 2 jurisdiction, are "foreign" or an "agency or instrumentality of a foreign state" in relation to petitioner's express will. Discovery, which has been effectively by-passed by appellate Court's action, which was denied with no justification other than based on presump-

tion[9] only, would have required respondents employer (United States) to come forth with evidence to show if it is or is not classed under §1603(a) and (b) as related to petitioner.

2) If respondents as agents of United States are, indeed, classed under §1603 as a "foreign" or "agency or instrumentality of a foreign state," then it requires that the federal court take jurisdiction to "consider whether one of the sovereign immunity exceptions contained in the bill (see sections 1605-1607 and 1610-1611) was applicable"[10] entitling respondents and their employer to immunity.

3) Section 1603(d) defines "commercial activity." Additionally, it is essentially critical to determine the "commercial nature of an activity or transaction" that respondents have acted on toward petitioner. Discovery would determine if respondents' agency has some type of fiduciary nexus, showing that plaintiff conveyed a gift of his res to United States and the agency of the respondents. Respondents' actions toward petitioner express a "commercial activity" because respondents have "obtained goods ... from private party (viz., plaintiff) ... in connection with an AID program."[11] Respondent's actions are

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[9]At hearing on April 21, 1994 regarding Motion to Compel Discovery before Magistrate Judge Gregory Hollows (plaintiff had not agreed to proceedings before magistrate judges) the court's action, to deny plaintiff's motion, appeared to be on only the grounds that plaintiff was presumed to be a "taxpayer," as the court used the term, and could not understand how plaintiff was "different from other taxpayers."

[10]See House of Representatives, Report No. 94-1487, 94th Congress 2d Session, page 15

[11]Ibid. at page 16.

nothing more than "borrowing"[12] and is defined as a "commercial activity" in House of Representative, Report No. 94-1487, supra (see footnote). "Borrowing" because plaintiff has been presumed to have gifted (volunteered) his property rights in return for the tacit hypothecation of being considered a beneficiary of the public trust association's public welfare policy considerations under the jurisdiction of Article IV Section 3 clause 2 known as "territory or other property."

4) If the respondents in their official capacity for the agency of a territory of the United States are determined, by the statute, to be "foreign" to plaintiff's situs, then "the burden will remain on the foreign state to produce evidence in support of its claim of immunity. Thus evidence must be produced to establish that a foreign state or one of its subdivisions, agencies or instrumentality's is the respondent in the suit and that the petitioner's claim relates to a public act of the foreign state—that is, an act not within the exceptions in sections 1605-1607. Once the foreign state has produced such prima facie evidence of immunity, the burden of going forward would shift to the petitioner to produce evidence establishing that the foreign state is not entitled to immunity. The ultimate burden of proving immunity would rest with the foreign state."[13]

5) The merits of the suit involve a dispute over "alleged inherited, and gifted property." Discovery of the existence or not of testamentary documents, showing whether petitioner conveyed a gift of his property rights (res) to respondents agency,

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[12]"To ... receive from another any article of property ... with the intention to ... return ... its equivalent." See Black's Law Dictionary, fourth edition, page 230

[13]See House of Representatives, Report No. 94-1487, 94th Congress 2d Session, supra, at 17

would reveal whose actions are justified—petitioner's or respondents'. Respondents' actions, without bringing forth documents to justify, "claim rights in" petitioner's "estate ... obtained by gift"—a commercial activity as defined by §1605(a)(4). "The reason is that , in claiming rights in a decedent's estate obtained by gift, the foreign state claims the same right which is enjoyed by private persons."[14] Likewise, respondents' and their agencies actions, on behalf of the property clause, imply that petitioner's property rights are in their control. Petitioner claims this presumption is a result of implied operation of law contrary to which petitioner has brought forth his "Declaration" as his express will to disclaim to be a fiduciary/beneficiary of the public trust of the several states.

Simply speaking, discovery is vital to determining if petitioner has "other property" within respondents' territorial jurisdiction.

6) Finally, discovery is vital to determine if petitioner's action comes under the "judicial Power" of Article III Section 2, clause 1.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to correct the abuse of discretion of the lower court and the appellate Court's agreement with that error. The appellate Court's agreement with lower court totally disregards a constitutionally significant and intended application of 28 U.S.C. §§ 1330(a) and 1605 (a) as shown by the final report of the House of Representatives regarding the Sovereign Immunities Act of 1976 and decisions of this Court.

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[14] Ibid. at page 20

Petitioner has demonstrated substantive evidence of his express will to be an citizen of the incorporated state within the meaning of the Constitution of the United States of America therefore, a Writ of Certiorari should be issued because:

1) A federal question "arising under" Article III § 2 clause 1 has been presented showing that appellate Court's functioned only with the prejudice of a territorial court, in agreeing with lower court, and thus did not take Article III cognizance of petitioners Constitutional issue thereby relegating petitioner to a territorial court jurisdiction.

2) The appellate Court, in agreement with lower court, has violated Article IV Section 3 clause 1 by creating another State which only Congress has power to do. Which, in effect, is also a "political decision" being made by the courts

3) The appellate Court has never directly addressed petitioner's particular construction of the property clause—Article IV Section 3 clause 2—as to whether it does or does not affect the property rights of Americans viz., petitioner, as to how his rights to property can be presumed lost, taken or presumed taken by jurisdictions of the "a territorial" United States government within the geographical United States of the incorporated Constitution.

4) The appellate Court has never created any case law as to how someone, like petitioner, can be assured access to Constitutional redress of grievances without the prejudice of court "discretion" being influenced by the politics of public policy consideration getting in the way.

5) The appellate Court is under franchise of the Constitution of the United States of America to open the way for petitioner to have free and unencumbered access to his sovereign Constitutional rights to redress the grievance brought about by conflict, legally ignored or unrealized, between jurisdictions

enumerated particularly for the U.S. government within the geographical nation and a sovereign American as petitioner claims.

6) The lower court and the appellate Court's decision has made a judgment on a constitutional and federal question that conflicts with decisions of the Supreme Court as pointed out by petitioner. However, there is no case law pursuant to petitioner's personal application.

7) If the erroneous judgement remains, petitioner has no constitutional remedy available from any other court for his injury.

FEDERAL RULES OF APPELLATE PROCEDURE INVOKED

In the denial of petitioner's Motion under Rule 60(b)(1), the appellate Court invoked Fed. R. App. P. 38 to impose a $1,500 sanction because of determining petitioners appeal was "frivolous." It appears that this was definitely reinforced by respondent's request based on assumption that appeal was another "frivolous" attempt to block tax collection when the question has nothing to do with taxes—rather it is a property rights dispute between a territory of the United States and a state and a citizen thereof with situs under the corporate Constitution of the United States of America

QUESTIONS PRESENTED-EVIDENCE

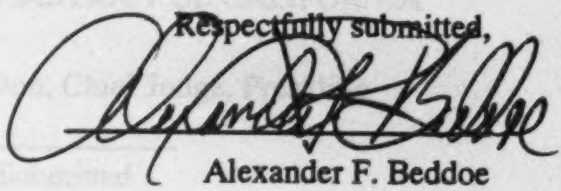
Petitioner proved with his evidence and the law surrounding the facts that petitioner is not subject to a "foreign power" operating quasi in rem under the United States government by authority of Article IV Section 3 clause 2—nor can he subjected to a state formed by courts' political decisions.

CONCLUSION

Petitioner submits that this Court should grant certiorari here to rule, explicitly, on the lower courts' moving

For these reasons, and all the reasons set forth above, a writ of certiorari to the Ninth Circuit Court of Appeals should issue to review the Judgment Memorandum of the court of Appeals in this matter. If this Court elects not to address the issues presented in this Petition at this time, petitioner requests that the Writ issue and that the matter be remanded to the Court of Appeals for the Ninth Circuit for redetermination in light of the lower court's disregard of petitioner's evidence and law filed in support-proof of his claims.

Respectfully submitted,



Alexander F. Beddoe

Petitioner

DATED: 5/27/94

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER F. BEDDOE

Plaintiff

No. 93-16753

vs

MEMORANDUM*

RAYMOND SPILLMAN, ET AL.,

Defendants

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Lawrence K. Karlton, Chief Judge, Presiding

Submitted

April 5, 1994**

Before: POOLE, BEEZER, and T.G. NELSON,

Circuit Judges

Alexander F. Beddoe appeals pro se the district court's denial of his Fed. R. Civ. P. 60(b)(1) motion for relief from

* This dispostion is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except a provided by 9th Cir. R. 36-3.

judgment. We review for an abuse of discretion, Floyd v. Laws, 929 F.2d 1390, 1400 (9th Cir. 1991), and we affirm.

Beddoe filed this action against several agent of the Internal Revenue Service and sought to state a claim under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), for the deprivation of property without due process. On July 1, 1993, the district court dismissed the action under Fed. R. Civ. P. 12(b)(6) and 12(b)(1). On July 21, 1993, Beddoe filed a motion under Fed. R. Civ. P. 60(b)(1) and requested that the district court reopen the case to allow him to file an amended complaint under 28 U.S.C.§§ 1330 and 1605(a)(1)(4)(5).[1] The district court denied the motion, finding Beddoe's argument "patently frivolous."

We agree with the district court that Beddoe's argument that he should be allowed to amend his complaint to state a claim under sections 1330 and 1605(a) is frivolous. Neither of these statutory provisions apples to the defendants in this action. Accordingly, we affirm the district court's denial of the Fed. R. Civ. P. 60(b) motion.

The appellees' request an award of $1,500 damages, in lieu of costs and attorney's fees, as a sanction against Beddoe for bringing this appeal. We have discretion to impose damages against litigants, even those proceeding pro se, for bringing a frivolous appeal. Fed. R. App. P. 38; 28 U.S.C. § 1912; Wilcox v. Commissioner, 848 F.2d 1007, 1008-09 (9th Cir. 1988) ($1,500 sanction imposed on pro se litigant for bringing a frivolous appeal). An appeal is frivolous if the results are obvi-

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[1] Under 28 U.S.C. § 1330, federal district courts have jurisdiction over "any nonjury civil action against a foreign state [.]" Section 1605 (a) provides that: "{a} foreign state shall not be immune from the jurisdiction of courts of the United States" in certain specified cases.

ous or the arguments of error are wholly without merit. Id. at 1009.

The district court repeatedly warned Beddoe that he would be sanctioned if he continued to pursue frivolous claims. Nevertheless, Beddoe filed this appeal, in which his arguments of error are wholly without merit. Accordingly, we grant the appellees' request for an award of $1,500 damages as a sanction against Beddoe. See id.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEXANDER F. BEDDOE
Plaintiff

No. Civ-S-93-516 LKK PAN

vs

ORDER

RAYMOND SPILLMAN, ET AL.,
Defendants

This matter is before the court on plaintiff's motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). The court has reviewed the file and briefs and rules on this matter herein, without argument. See Local Rule 230(h) and Fed. R. Civ. P. 78. For the reasons stated below, plaintiff's motion is DENIED.

I

BACKGROUND

Plaintiff filed this suit on March 26, 1993, alleging two causes of action against defendant Internal Revenue Service agents for actions in their "individual private and several capacities." Complaint at ¶ 5. The court construed plaintiff's first cause of action to be one made pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), and his second cause of action to be a supplemental state claim for "fraud, extortion, duress and personal injury." Defendants noticed a motion to dismiss pursuant to Fed. R. Civ. P. 16(b)(6) and 12(b)(1) on May 17, 1993. By order filed July 1, 1993, this

court granted that motion, finding plaintiff's first claim to be "nothing more than an attempt to assert claims against IRS agents for their actions in furtherance of their attempt to collect taxes," Order at 5, and as such not cognizable under any due process theory. Id. The court likewise dismissed plaintiff's second claim, finding that it was subject to the substitution provisions of 28 U.S.C. § 2679(d)(l), and therefore cognizable only under the Federal Tort Claims Act, with which plaintiff failed to comply. Plaintiff now brings this motion for relief from that judgment.

II

STANDARDS

Federal Rule of Civil Procedure 60(b)(1) provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment order or preceding for ... (1) mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Such motions must be made within one year of judgment. Id. The granting or denial of such motions is left largely to the discretion of the district court. Meadows v. Dominican Republic, 817 F.2d 517, 521 (9th Cir.), cert. denied, 484 U.S. 976 (1987); Savarese v. Edrick Transfer & Storage, Inc., 513 F.2d 140, 146 (9th Cir. 1975). The court must consider, however, that Rule 60(b) is remedial in nature, and should be liberally applied. Meadows, 817 F.2d at 521. Thus, there defendant seeks timely relief and has a meritorious defense, doubts as to the granting of the motion should be resolved in favor of the defendant. Id. The moving party, however, must make a showing justifiable mistake or inadvertence. See generally, 11 Wright Miller, Federal Practice and Procedure § 2558; Werner v. Carbo, 731 F.2d 204, 206-07

(4th Cir. 1984) (to obtain relief under Rule 60(b), movant must show timeliness, meritorious defense, lack of unfair prejudice to opposing party and exceptional circumstances).

III

ANALYSIS

Plaintiff, relying solely on his status as a pro se litigant, argues that he was mistaken in bringing his prior complaint under 28 U.S.C. § 1331. He seeks to vacate judgment so that he may correct his legal mistakes via an amended complaint under the jurisdiction of 28 U.S.C. §§ 1330, 1605(a)(1)(4)(5), the Foreign Sovereign Immunities Act.[1] Plaintiff has utterly failed to meet his burden of showing justifiable mistake or excusable inadvertence under Rule 60(b). Moreover, his assertion that this court has jurisdiction to entertain his claim under the Foreign Sovereign Immunities Act is patently frivolous. Accordingly, his motion for relief from judgment is DENIED.

In its prior order, the court noted that "[p]laintiff's jurisdictional theory involving his alleged expatriation and his status as a "'territorial subject of interstate federalism' has been soundly rejected by the Ninth and other circuits. See In re Becraft, 885 F.2d 547, 548 n.2 (9th Cir. 1989)." Order at 6 n.1. The court further warned that "[a]sserting such a theory in light of plain authority to the contrary constitutes violation of Fed. R. Civ. P.

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[1] That section provides that "[t]he district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement." 28 U.S.C. § 1330.

11." Id. Despite this warning, plaintiff insists on arguing that it was his mistake in failing to bring his claims under a jurisdictional theory drawing o his status as a "territorial subject" which merits the granting of the Rule 60(b) motion.[2] In one last act of grace, the court warns plaintiff that future frivolous filings will result in the imposition of monetary sanctions pursuant to Rule 11 and the issuance of a vexatious litigant order, thereby precluding him from filing any further documents in this court unless he gives security or bond. See Local Rule 151(b) and Cal. Civ. Pro. Code § 391.

Accordingly, IT IS HEREBY ORDER that:

1. Plaintiff's motion for relief from judgment pursuant to Rule 60(b) is **DENIED;**

2. The hearing set for September 7, 1993, is **VACATED.**

IT IS SO ORDERED.

DATED: September 1, 1993

signed/

Lawrence K. Karlton
Chief Judge Emeritus
United States District Court

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[2] Plaintiff argues that "[t]he unilateral act of conveying the 'person' of Alexander F. Beddoe as gift in trust to 'a territory' has been rebuffed by plaintiff therefore, defendant has no other property, quasi in rem, within its jurisdiction by or through which to lay claim to plaintiff's property, therefore, all defendants tortuous actions are foreign and extraterritorial to plaintiff." Reply at 3.

DECLARATION OF INDEPENDENCE

I, Alexander F. Beddoe, in the name of the Almighty Creator by the Declaration of Independence solemnly Publish and Declare of right to expatriate absolute my res from the foreign jurisdiction in trust to the municipal corporation of the District of Columbia, a democracy, and return to the Republic, and any and all past and present political ties implied by operation of law or other wise in trust with the democracy are hereby, dissolved.

I, Alexander F. Beddoe have full power to contract, establish commerce as guaranteed by the full 10 amendments of the Bill of Right to the Constitution of the United State of America a Republic.

So Done this 19 day of September, 1990

Signed:

Alexander F. Beddoe

P.O. Box 1250

Grass Valley, CA 95945

Affirmed and Subscribed before me this 19 day of September, 1990

/s/Teresa E.R. Carsten

September 25, & October 2, 9, 16, 23, 1990

#2916

Affidavit of Publication signed and certified on October 23, 1990 by Betsy Hunter principal clerk of the Nevada County Publishing Co.

PROOF OF SERVICE

I, Alexander F. Beddoe, pursuant to 28 U.S.C. § 1746(1) declare and certify under penalty of perjury under the laws of the United States of America that service, to all parties required to be served, of the foregoing **PETITION FOR COMMON LAW WRIT OF CERTIORARI** has been made, pursuant to Supreme Court Rule 29.5(c), this 27 day of May, 1994, by mailing three (3) true and correct copies first class mail, postage prepaid to each of the following:

Solicitor General
Department of Justice
Washington, D.C. 20530

Gary R. Allen
Chief, Appellate Section
Tax Division
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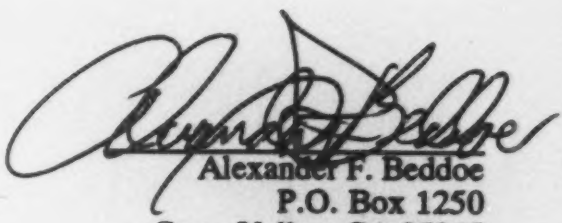

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